

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FREDERICK A. POSTIE, :
Plaintiff : CIVIL ACTION NO. 3:14-00317
v. : (MANNION, D.J.)
SGT. DUANE FREDERICK, : (MEHALCHICK, M.J.)
OFFICER ADAM SINTON, JR., :
and RUSH TOWNSHIP, :
Defendants :
M E M O R A N D U M

Pending before the court is the report of Judge Karoline Mehalchick, (Doc. [51](#)), which recommends that the defendants' partial motion to dismiss the plaintiff's second amended complaint, (Doc. [46](#)), be granted in part and denied in part. No objections have been filed to Judge Mehalchick's report.

The plaintiff filed his second amended complaint with this court on December 21, 2015, in which he raises claims under 42 U.S.C. §1983 for the violation of his civil rights, as well as several state law claims, against defendants Frederick and Sinton, and a municipal liability claim under §1983 against Rush Township. (Doc. 45). The defendants moved to partially dismiss the plaintiff's second amended complaint on January 4, 2016, seeking dismissal of the municipal liability claim against Rush Township and various federal and state law claims against defendants Frederick and Sinton, but conceding that the plaintiff has stated claims against defendants Frederick and Sinton for false arrest, false imprisonment, and malicious prosecution

under the Fourth Amendment, as well as corresponding state law claims. (Doc. 46, Doc. 47).

Having reviewed the claims raised in the plaintiff's second amended complaint, as well as the defendants' arguments for partial dismissal of those claims, Judge Mehalchick recommends that the defendants' motion for partial dismissal be granted in part and denied in part. Specifically, it is recommended that the defendants' motion to dismiss the plaintiff's §1983 claims arising under the Fourteenth Amendment be granted as to all defendants and that the claims be dismissed with prejudice. It is recommended that the defendants' motion to dismiss the plaintiff's §1983 claims arising under the Fourth Amendment for abuse of process and loss of privacy be granted as to all defendants and that the claims be dismissed with prejudice for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). Judge Mehalchick recommends that the defendants' motion to dismiss the plaintiff's state law claims for abuse of process and failure to intervene be granted as to all defendants and the claims be dismissed with prejudice for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6). Finally, it is recommended that the defendants' motion to dismiss the plaintiff's state law claim for assault and battery be granted and dismissed with prejudice as to defendant Frederick for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(6), but denied as to defendant Sinton.

For those sections of the report and recommendation to which no

objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed. R. Civ. P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 \(M.D.Pa. 2010\)](#) (*citing* [Henderson v. Carlson, 812 F.2d 874, 878 \(3d Cir. 1987\)](#) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

The court has reviewed the reasons presented by Judge Mehalchick for the recommendations made in her report. Because the court agrees with the sound reasoning that led Judge Mehalchick to the conclusions in her report and finds no clear error on the face of the record, the court will adopt the report in its entirety. An appropriate order shall issue.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

Date: August 29, 2016

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